IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

Tr.P(C).No. 169 of 2007()

OS.90/2005 of MUNSIFF COURT,HARIPAD
O.S. 2/06 OF THE SUB COURT, MAVALIKKARA

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PETITIONER

SURESH B., S/O BHUVANACHANDRAN,
KARUVATTA VILLAGE, THEKUM MURIYIL,
SURYAMAGALAM VEEDU, KARUVATTA P.O.

BY ADV. SRI.K.SUBASH CHANDRA BOSE

RESPONDENT:

N.M.MOHAN DAS, VIKAS BHAVAN VEEDU,
VADAKKUM MURI, KARUVATTA VILLAGE.

BY ADV. SRI.V.MADHUSUDHANAN
SRI.B.UNNIKRISHNA KAIMAL
SRI.V.VENUGOPAL
SRI.PRAMJI PAUL VAZHAPPILLY
SRI.S.SANKARAN THAMPI
SRI.ANIL K.NAIR

THIS TRANSFER PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.Krishnan, J.

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Tr.P(C).No.169 of 2007

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Dated this the 11th day of September, 2007.

JUDGMENT

This petition is filed to transfer O.S.No.90 of 2005 pending before the Munsiff Court, Haripad to the Sub Court, Mavelikkara for trying it along with O.S.No.2 of 2006 pending there.

2. Heard both sides. O.S.No.2 of 2006 is a suit for specific performance filed by the plaintiff against the defendant on the basis of two agreements dated 9.12.1998 and 12.11.2003. O.S.No.90 of 2005 pending before the Munsiff Court, Haripad is one for eviction wherein the plaintiff therein, who is the defendant in the other suit contends for the position that the property is held by the defendant in O.S.No.90 of 2005 as a lessee and his further contention in O.S.No.2 of 2006 is that there is no agreement to sell and there is no enforcible agreement between the parties.

3. In order to have a proper resolution of the dispute between the parties, the main question to be considered appears to be in the suit for specific performance. If the plaintiff therein is entitled for a decree for specific performance, then automatically, the suit for eviction will have to be dismissed. If it is otherwise then O.S.No.90 of 2005 may have to be decreed and there will be considerable force in the contention of the plaintiff in O.S.No.90 of 2005. It is alleged that the plaintiff in O.S.No.2 of 2006 is a tenant under him. So, it is only just and proper that a joint trial is ordered and both the cases are disposed of by the same court. Reasons are that the documents are the same, evidence is almost the same and the points in issue are also the same.

4. Therefore, I direct the Munsiff, Haripad to transfer O.S.No.90 of 2005 pending before that court to the Sub Court, Mavelikkara where O.S.No.2 of 2006 is pending. Learned Subordinate Judge, Mavelikkara is directed to jointly try both the suits and as it is complained that the plaintiff in O.S.No.90 of 2005 is not getting any rent at all, the learned Subordinate judge shall make the specific performance suit ripen for trial at the

earliest and try to dispose of both the matters as expeditiously as possible.

Transfer petition is disposed of as above.,

M.N.Krishnan,
Judge.

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